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February 21, 2017

Via Electronic Mail (regs.comments@federalreserve.gov)

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, DC 20551

RE: Proposed Guidelines for Evaluating Joint Account Requests (Docket No. OP-1557)

Ladies and Gentlemen:

The Clearing House Payments Company, L.L.C.[1] (TCH) is writing to provide comments in response to the Federal Reserve Board's proposed guidelines for evaluating joint accounts to facilitate settlement for U.S. payment systems (the Guidelines).[2] As the agent of the Federal Reserve's two existing joint accounts and a highly-regulated operator of payment systems, including a new real-time payment system that will go live this year, TCH supports the establishment of the Guidelines.

Further, we think the Guidelines specify appropriate considerations and standards for payment systems (including their participants, operator, and account agent) that seek to utilize a joint Federal Reserve account. In particular, we strongly agree with the application of the Federal Reserve's Payment System Risk Policy and expectations for a sound legal and operational basis to such payment systems. Hence, TCH is very supportive of the Guidelines overall but offers a few comments to further improve them.

[1] The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly $2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. The Clearing House Association L.L.C is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

[2] Proposed Guidelines for Evaluating Joint Account Requests, 81 Fed. Reg. 93923 (Dec. 22, 2016).

As more fully discussed below, TCH respectfully suggests that

- the Guidelines require a joint account agent and the operator of the payment system that utilizes the joint account to be subject to federal supervision and examination under the FFIEC's program for third party technology service providers; and

- liquidity concerns under Principle 5 and monetary policy concerns under Principle 6 related to a joint account request be addressed early on during evaluation of a joint account proposal and that any parameters to which a joint account will be held to address such concerns should be established in the account agreement with the relevant Reserve Bank.

1. Supervision and Examination of Agents and Operators

Settlement on Federal Reserve Bank books is the surest and safest form of interbank settlement in the United States and, thus, should only be available to private sector arrangements that are themselves reliable and safe. Moreover, TCH recognizes that the optional provision of account services to facilitate settlement for private sector arrangements carries the potential to create reputational and other risks for Federal Reserve Banks. Accordingly, account agents and operators of payment systems that seek the benefit of such settlement should be held to high standards with respect to their legal, risk management, and operational arrangements. Thus, TCH strongly supports Principle 2 of the Guidelines, which provides that a private-sector arrangement that is supported by settlement on Federal Reserve Bank books "must demonstrate that it has a sound legal and operational basis for its payment system."

The Board explains that an evaluation under Principle 2 would include factors such as whether the private-sector arrangement has analyzed application of relevant laws and regulations and whether the arrangement has policies and procedures to minimize disruptions to the system due to insolvency, fraud, and operational failure. Such evaluation would also include consideration of the applicable supervisory framework for the private-sector arrangement. With respect to the agent and the operator of the private-sector arrangement, the Board notes that these entities "should be subject to the examination authority of a federal or state supervisory agency and be in compliance with the requirements imposed by its supervisor regarding financial resources, liquidity, participant default management, and other aspects of risk management."[3]

TCH is concerned that state examination authority over entities that perform services for depository institutions (i.e., the entities that would serve as a joint account agent or operator of the payment system) is not equivalent to federal examination authority with respect to such entities. Unlike mortgage activities in which state supervisory authorities have coordinated to enable a uniform approach to supervision[4], there is no equivalent coordination or standardization with respect to non-bank technology service providers that would serve as the agent of a joint account or the operator of a payment system that utilizes a joint account. Thus, in addition to

[3] 81 Fed. Reg. at 93925.

[4] State supervisory authorities have coordinated through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to develop extensive supervisory guidelines, policies, procedures, and tools related to regulation and supervision of mortgage lending. See, Mortgage Policy Guidance, available at https://www.csbs.org/regulatory/policy/policy-guidelines/Pages/default.aspx.

likely differences in the application of state supervisory authority to account agents and payment system operators, the lack of common supervisory standards for such entities would mean that state supervision, when it would apply, would vary in rigor and scope. Such supervisory variance appears inconsistent with the Federal Reserve's concern for the safety and reliability of payment systems, especially those that would seek the benefit of settlement on Federal Reserve Bank books.

In contrast to state supervision, there is a well-established and detailed supervisory approach to technology service providers at the federal level. Pursuant to the Bank Service Company Act (the BSCA), the appropriate federal banking agency has supervisory authority over third parties who perform certain services for depository institutions to the extent the services are authorized by the act. The federal banking agencies, through the Federal Financial Institution Examination Council (FFIEC), have used their authority under the BSCA to develop an interagency program for the supervision of third-party technology service providers (TSPs). TSPs include both wholesale payment systems and retail payment systems and the FFIEC has issued booklets relating to both types of systems, the Wholesale Payment Systems Booklet[5] and the Retail Payment Systems Booklet[6], each of which sets forth a set of detailed examination procedures for reviewing risks in the relevant payment systems.

The FFIEC examination process and scope is broad in nature, giving the examining agency a significant amount of discretion in what aspects of the TSP's operations will be examined. The agencies develop a risk-based supervisory strategy for the TSP, which may include a review of a TSP's risk management program, audit and internal controls, information technology and financial condition. In particular, in reviewing a TSP's risk management, examiners are instructed to consider the following factors: (a) directorate oversight; (b) extent of the TSP's technical and managerial expertise; (c) quality of the TSP's policies and procedures; (d) adequacy of the TSP's controls and operational processes; (e) quality of the audit function; (f) volume and extent of problems reported by client financial institutions; and (g) timeliness, accuracy, adequacy, and completeness of management information systems used to measure performance, make sound decisions about risk, and assess the effectiveness of processes."[7]

Large and complex TSPs that process mission-critical applications are subject to more rigorous supervision under the Multi-Regional Data Processing Servicers (MDPS) program. An MDPS company is a large and complex TSP designated by the agencies for special monitoring and collaborative interagency supervision at the national level. "Generally, a TSP is considered for examination under the MDPS program when the TSP processes mission-critical applications for a large number of financial institutions that are regulated by more than one [federal banking agency], thereby posing a high degree of risk, or when the TSP provides services through a number of technology service centers located in diverse geographic regions."[8] There are additional examination requirements for MDPS companies beyond those described above, such

[5] Wholesale Payment Systems (July 2004), available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_WholesalePaymentSystems.pdf.
[6] Retail Payment Systems (Feb. 2010), available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_RetailPaymentSystems.pdf.
[7] FFIEC, Administrative Guidelines— Implementation of Interagency Programs for the Supervision of Technology Service Providers (Oct. 2012), at 4.
[8] Id. at 9.

as an enhanced focus on financial information. The key analytical points of this additional analysis include financial trends, liquidity, debt and leverage.

While the TSP and MDPS programs are primarily focused on ensuring the safety and soundness of depository institutions that use a service provider's services, the programs have the additional benefit of ensuring the safety and soundness of the service provider itself. [9] As TCH is not aware of any state examination program that is comparable to the FFIEC TSP program, and any agent or operator that is providing services to depository institutions at a meaningful enough scale to meet Principle 3 of the Guidelines (i.e., a private sector arrangement that promotes innovation, fosters competition, and is widely available for use) should fall under the FFIEC TSP program, TCH suggests that, at a minimum, the Guidelines provide that an agent or operator must be subject to federal supervision under the TSP program, if not the MDPS program. This will ensure that account agents and operators are held to consistent standards and subject to a sound level of supervision.

2. Liquidity and Monetary Policy Risks

Principles 5 and 6 of the Guidelines focus on the potential impact of a joint account on depository institutions' (i) ability to meet other intraday liquidity needs or (ii) reserve balances. With respect to potential impact on reserves and implications for monetary policy implementation, the Board appears most concerned with the volatility of the balance of a joint account as well as payment flows in and out of the account. The Board indicates that Reserve Banks (i) would retain the right to limit account volatility or require information on the level or projected volatility of balances and (ii) might retain the right to impose a limit on the size of the account at any time it determines appropriate or restrict or close any account, if warranted to implement monetary policy objectives.

TCH understands the Board's need to consider the impact of joint accounts on intraday liquidity and reserves, as both matters are core to the Federal Reserve's mission. We believe that the best way to implement Principles 5 and 6 would be during the evaluation phase of a joint account proposal and that the parameters to which a joint account will be held (i.e., any limits on size, activity, or balance ranges) should be established in the account agreement with the relevant Reserve Bank. While TCH understands the potential need of a Reserve Bank to adjust these parameters over time, we think that in the interest of ensuring the safety and predictability of the payment systems supported by joint accounts, the ability to adjust parameters should generally be subject to reasonable advance notice and consideration of the impact of new or revised account parameters on the related payment systems.

Likewise with respect to termination of an account, we think that such a decision should require consideration of the impact both to the related payment system as well as the larger financial system. Termination should also generally be subject to sufficient advance notice as to enable the private sector arrangement to make alternate arrangements, if possible, for its settlement needs or for participants to safely migrate their payment activity to other systems.

[9] TCH notes that its current wire, ACH, and check image services fall under the MDPS program and further expects that its real-time payment system will be similarly supervised. In addition to the MDPS program, with respect to its operation of CHIPS (TCH's wire service), TCH also falls under enhanced supervision due to its designation as a systemically important financial market infrastructure under Title VIII of the Dodd Frank Act.

Moreover, with respect to any operator that has been designated as a systemically important financial market utility (SIFMU), termination of a joint account that supports the systemically important activity of the SIFMU should be done in a manner consistent with the SIFMU's recovery and wind down plan and in coordination with the SIFMU's primary regulator.

3. Public Information about Establishment of Joint Accounts

The Board asked for comment regarding what information, if any, about the establishment of a joint account should be made public. TCH believes that disclosure of certain key information about joint accounts is appropriate so that such arrangements can be transparent to the public. We would support the following non-confidential information being made public:

- Name of the private sector arrangement , agent, and operator;
- Account holding Reserve Bank;
- Date the joint account was established ;
- Description of the private sector arrangement , including a basic explanation of how the arrangement works, the purpose of the arrangement, and intended participants and use cases; and
- The manner in which the joint account supports the private arrangement.

TCH does not think it would be appropriate to disclose confidential information such as functional, technical or operational details of the payment system, detailed business plans, or documents that are the intellectual property of an agent or operator as such disclosure may result in security risk or competitive harm to the agent or operator.

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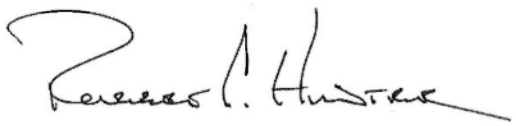
The Clearing House appreciates the opportunity to comment on the proposed Guidelines. If you have any questions, please contact the undersigned by phone at (336) 769-5314 or by email at Rob.Hunter@theclearinghouse.org.

Respectfully submitted,



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